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watching and taking notes of the trials of race horses on the plaintiff's land. The plaintiff brought an action against the defendant for trespass in thus using the highway, and the jury found a verdict for the plaintiff, and Day, J., who tried the action, gave judgment for the plaintiff and granted an injunction to restrain further trespass by the defendant. On appeal from that judgment the Court of Appeal (Smith, Collins, and Romer, L. J.J.,) following *Harrison v. Ruiland* (1893) 1 Q. B. 142, affirmed the decision."

ANTICIPATORY BREACH OF CONTRACT.—In *Roehm v. Horst*, 20 Sup. Ct. 780, in which was involved the anticipatory breach of contracts, it is said: "But there are many cases in which, before the time fixed for performance, one of the contracting parties may do that which amounts to a breach and furnishes a ground of damages. It has always been the law that where a party deliberately incapacitates himself or renders performance of his contract impossible, his act amounts to an injury to the other party, which gives the other party a cause of action for breach of contract; yet this would seem to be inconsistent with the reasoning in *Daniels v. Newton*, 114 Mass. 530, though it is not there in terms decided 'that an absolute refusal to perform a contract, after the time and under the conditions in which plaintiff is entitled to require performance, is not a breach of the contract, even although the contract is by its terms to continue in the future.' *Parker v. Russell*, 133 Mass. 74.

"In truth, the opinion goes upon a distinction between cases of renunciation before the arrival of the time of performance and those of renunciation of unmatured obligations of a contract while it is in course of performance, and it is said that before the argument on the ground of convenience and mutual advantage to the parties can properly have weight, 'the point to be reached must first be shown to be consistent with logical deductions from the strictly legal aspects of the case.'

"We think that there can be no controlling distinction on this point between the two classes of cases, and that it is proper to consider the reasonableness of the conclusion that the absolute renunciation of particular contracts constitutes such a breach as to justify immediate action and recovery therefor. The parties to a contract which is wholly executory have a right to the maintenance of the contractual relations up to the time for performance as well as to a performance of the contract when due. If it appear that the party who makes an absolute refusal intends thereby to put an end to the contract so far as performance is concerned, and that the other party must accept this position, why should there not be speedy action and settlement in regard to the rights of the parties? Why should a *locus paenitentiae* be awarded to the party whose wrongful action has placed the other at such disadvantage? What reasonable distinction *per se* is there between liability for a refusal to perform future acts to be done under a contract in course of performance and liability for a refusal to perform the whole contract made before the time for commencement of performance?

"As Lord Chief Justice Cockburn observed in *Frost v. Knight*, L. R. 7 Exch. 111, the promisee has the right to insist on the contract as subsisting and effective before the arrival of the time for its performance, and its unimpaired and unimpeached efficacy may be essential to his interests, dealing as he may with rights

acquired under it in various ways for his benefit and advantage. And of all such advantage, the repudiation of the contract by the other party, and the announcement that it never will be fulfilled, must of course deprive him. While by acting on such repudiation and the taking of timely measures, the promisee may in many cases avert, or, at all events, materially lessen, the injurious effects which would otherwise flow from the non-fulfillment of the contract.

"During the argument of *Cort v. Ambergate, N. & B. & E. Junction R. Co.*, 17 Q. B. 127, Erle, J., made this suggestion: 'Suppose the contract was that plaintiff should send a ship to a certain port for cargo, and defendant should there load one on board; but defendant wrote word that he could not furnish a cargo; must the ship be sent to return empty?' And if it was not necessary for the ship owner to send his ship, it is not perceived why he should be compelled to wait until the time fixed for the loading of the ship at the remote port before bringing suit upon the contract.

"If in this case these ten hop contracts had been written into one contract for the supply of hops for five years in instalments, then when the default happened in October, 1896, it cannot be denied that an immediate action could have been brought in which damages could have been recovered in advance for the breach of the agreement to deliver during the two remaining years. But treating the four outstanding contracts as separate contracts, why is it not equally reasonable that an unqualified and positive refusal to perform them constitutes such a breach that damages could be recovered in an immediate action? Why should plaintiff be compelled to bring four suits instead of one? For the reasons above stated, and having reference to the state of the authorities on the subject, our conclusion is that the rule laid down in *Hochster v. De la Tour* is a reasonable and proper rule to be applied in this case and in many others arising out of the transactions of commerce of the present day." See "Editorial."